

II. REMARKS

A. Introduction

The Action notes that claims 1-14 are pending, and are rejected under 35 U.S.C. §§ 112, 102 and 103. In response, claims 1, 2, 7 and 13 are canceled, claims 3-6 and 8-12 and 14 are amended and remarks are provided.

More particularly, the subject matter of canceled claims 1 and 7 has been added to claim 3, which is now independent, and the subject matter of claims 1 and 13 has been added to claim 9, which is now independent.

B. Rejection of Claims 1-14 Under 35 U.S.C. § 112, Second Paragraph

As noted above, claims 1, 2, 7 and 13 are canceled. However, claims 3-6 and 8-12 and 14 are amended herein to address the Examiner's rejections. It is respectfully submitted that these amended claims fully comply with 35 U.S.C. § 112.

C. Rejection of Claim 1 Under 35 U.S.C. § 102.

This claim is rejected as being anticipated by Korean Reference No. 20020026900 (the '900 reference). As noted above, this claim is canceled, so the rejection is moot.

D. Rejection of Claims 2, 8 and 14 Under 35 U.S.C. § 103

These claims are rejected as being made obvious by the '900 reference, Chang et al. (Korean Reference No. 2002-023520) and Russian Reference No. 2119942. The '900 reference is cited for teaching "fermented wine made from fruit of deciduous shrub or latifoliate shrub in the family Araliaceae, relying on the Abstract (as applied to claim 1), but not the addition of the extracts, for which Chang et al. and the Russian Reference are cited.

As noted above, claim 2 has been canceled. However, for the following reasons, it is respectfully submitted that the present invention, as recited by amended claims 8 and 14, was not rendered obvious by the cited combination.

Claim 8 depends from now independent claim 3 and dependent claim 4 (4 depending from 3). Independent claim 3 recites a process of producing fermented wine from the crude fruit of a deciduous shrub or a latifoliate shrub of the plant Aralia Elata, in which the shrub is selected from *Acanthopanax sessiliflorus* or *Acanthopanax senticosus*, wherein the crude fruit is formed into a solution with water and sugar, and the solution is fermented with yeast. Claim 8 adds extract when preparing the solution. Claim 4 refers to filtering and maturing the fermented solution.

Claim 14 depends from now independent claim 9 and dependent claim 10 (10 depending from 9). Independent claim 9 recites a process of producing fermented wine from the crude fruit of a deciduous shrub or a latifoliate shrub of the plant Aralia Elata, in which the shrub is selected from *Acanthopanax sessiliflorus* or *Acanthopanax senticosus*, wherein the crude fruit is dried before being put into a solution with water and sugar, and the solution is fermented with yeast. Claim 14 adds extract when preparing the solution. Claim 10 refers to filtering and maturing the fermented solution.

An English translation of the '900 reference is submitted by way of the Information Disclosure Statement submitted herewith.

The '900 reference discloses a method for producing a wine with relatively high alcohol content and relatively low sweetness. The '900 reference discloses fermenting fruits using agitation tools without the use of light or oxygen.

As noted above, the Abstract of the reference is relied upon for allegedly teaching the use of the fruit of the recited shrubs. In this regard, Page 7, fourth full paragraph of the '900 reference describes the types of fruit for which the invention is intended, as follows:

... the grapes, the cherry, the banana, the orange, strawberry..., a prune, the times, the apple, a plum, a feeling, the melon, a tomato, a watermelon, the *Cucumis sativus*, a kiwi, a mulberry, the *Vitis coignetiae* PULLIAT, the *Actinidia arguta*, the *Corni Fructus*, the ***Acanthopanacis Cortex***... And the wine, the plum wine, the orange main part, the peach liquor, the apple wine, the cherry main part, the cherry wine, the strawberry wine and banana main part...

(Emphasis supplied).

Of the above, the only one that relates to the claimed subject matter, i.e., fruit of the shrubs *Acanthopanax sessiliflorus* or *Acanthopanax senticosus*, is the *Acanthopanacis Cortex* which is the root coat and the bark derived from the *Acanthopanax* tree, also known as "Ogapi". See, e.g., page 3, lines 17 to page 4, line 15, of the application as filed discussing Ogapi. Attached hereto are photos of the Ogapi bark and the Ogapi fruit. The English translation of the Japanese Encyclopedia submitted by the Information Disclosure Statement confirms the presence of the fruit. As noted on page 5, lines 16-20 of the present application, while the "Ogapi" roots and bark are used for various purposes, the fruit is usually "left or discarded in practice." Thus, it appears that those of ordinary skill consider the fruit to be of little value.

However, the present claims recite how to produce valuable wine from this fruit of the shrubs *Acanthopanax sessiliflorus* or *Acanthopanax senticosus*. See, e.g., page 6, lines 7-15, page 10, lines 12-17 and 23-27, page 11, lines 1-6 and page 12, lines 11-18 of the present application.

Thus, while the '900 reference teaches the use of generally known fruits, such as grapes or strawberries for making wine, and specifically the use of roots and bark of the recited shrubs, the reference fails to suggest any need or purpose for using the "Ogapi" fruit in the making of wine.

It is respectfully submitted that the Chang et al. and the Russian Reference fail to compensate for the incomplete teaching of the '900 reference. That is, neither suggest using the recited fruit for the purpose of making wine.

#### E. Rejection of Claims 3-7 Under 35 U.S.C. § 103

These claims are rejected as being made obvious by the '900 reference and the article "Production of Fruit..." by Skripnikov.

As noted above, claim 7 has been canceled. However, for the following reasons, it is respectfully submitted that the present invention, as recited by amended claims 3-6, was not rendered obvious by the cited combination.

As discussed above, the primary reference, the '900 reference, does not address the use of the fruit of the recited shrubs as an ingredient for the production of wine. The article relates to adding sugar and alcohol content, but fails to suggest the use of the recited fruits in making the wine.

#### F. Rejection of Claims 9-13 Under 35 U.S.C. § 103

These claims are rejected as being made obvious by the combination discussed immediately above, and Russian Reference No. 2032727.

As noted above, claim 13 has been canceled. However, for the following reasons, it is respectfully submitted that the present invention, as recited by amended claims 8 and 14 were not rendered obvious by the cited combination.

Again, the combination of the '900 reference and the article fail to teach the use of the recited fruit in making wine. Also, as noted above, the Russian reference fails to compensate for this incomplete teaching as it relates to additional ingredients for the wort, not the starting fruit material.

III. CONCLUSION

It is respectfully submitted that claims 3-6 and 8-12 and 14 are now in condition for allowance.

If there are any formal matters remaining after this Response, the undersigned would appreciate a telephone conference with the Examiner to attend to these matters.

If any further fees are required in connection with the filing of this Response, please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

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TITLE: FERMENTED WINE MADE FROM  
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INVENTORS: Dae-Sung CHOI  
SERIAL NO.: 10/551,441  
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PHOTO ATTACHMENT FILED WITH  
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